

DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, Judge

CACR05-1304

AUGUST 30, 2006

RICKY JONES

APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR04-881]

V.

HON. MARION HUMPHREY,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Ricky Jones appeals his conviction for battery in the second degree. He was sentenced to 180 months in the Arkansas Department of Correction. On appeal he argues that the State failed to present substantial evidence that the victim William Douglas Mutton suffered serious physical injury. We affirm.

Appellant was charged with rape and battery in the second degree.¹ William Douglas Mutton testified that on January 12, 2004, he was homeless and staying in a camp off Cantrell Road in Little Rock. He had known appellant for approximately a week at that point and they drank alcohol together several times during that week. He stated that around 4:30 or 5:00 p.m., he and appellant began drinking a half gallon of vodka. Later that night appellant began talking about his violent past. Appellant then got up, walked behind Mutton, who was seated, and struck him on the side of the face. According to Mutton, appellant struck him hard enough to knock him to the ground. Mutton further stated that

¹ A mistrial was declared on the rape charge, so we will not discuss the facts pertinent to it.

appellant continued to hit him and began kicking him in the face. He said appellant choked him, picked him up from the ground, and forced him into a “hut.” Mutton said that he must have passed out because he later awoke wearing no clothes. He crept out of camp and went to a nearby E-Z Mart where someone called 911.

In describing his injuries, Mutton said that both his eyes were blackened and that the orbital bone around his left eye was broken in two places. He was told that he might have to have surgery to repair the orbital bone. Mutton stated that his vision continued to be blurred in his left eye and that he frequently felt numbness or tingling under his left eye. He also stated he had a scar under his chin.

Officer John Maack with the Little Rock Police Department testified that he responded to a report of a battery at the E-Z Mart on Cantrell Road. He stated that when he encountered the victim, the victim was bleeding and had cuts and bruises on his face. Maack believed the victim needed immediate medical attention so he summoned MEMS. He stated that he believed the victim’s injuries were serious.

Pamela Tabor, a sexual assault nurse examiner at the University of Arkansas Medical Science campus, testified as to her credentials and stated that she had examined Mutton when he was brought to the hospital. She said there was bruising on the side of Mutton’s neck; both his eyes were black; his face was covered with blood; he had several lacerations on his face; and he had bruises on his back, leg and hip. Tabor stated that she dealt only with the sexual-assault aspect of Mutton’s injuries and that a doctor tended to the injuries on his face.

Officer Ronnie Smith with the Little Rock Police Department testified that following the assault he made contact with appellant at the camp. He stated that appellant had blood

on his shoes and jeans and that his hand was swollen. At the police station, appellant gave a statement to Officer Smith in which he admitted having kicked Mutton in the face.

Defense counsel then moved for a directed verdict in which he stated:

Your honor we'd move for - we'd make a motion for a directed verdict, particularly on the rape charge. There is no direct testimony that a rape occurred. The statement of the victim was that he had no recollection of that portion of the night. The testimony of the expert was based upon a - even if properly admitted was just based upon a fact scenario that's inconsistent with what the victim testified to today.

Defense counsel continued to argue his motion but only as to the rape charge. He stated, "And so, we would rest. And we would renew all our motion (sic) for a directed verdict."

On appeal appellant argues that the State failed to show that Mutton suffered serious physical injury as a result of being hit and kicked by him. Appellant contends that Mutton may have suffered "physical injury" but that the State was required to show that the victim suffered *serious* physical injury.

Appellant's argument is not preserved because he failed to move for a directed verdict on the charge of second degree battery. To preserve an issue for appeal from a decision on a directed verdict motion, the issue must be stated clearly and specifically to the circuit court. *Patrick v. State*, 314 Ark. 285, 862 S.W.2d 239 (1993); *see also* Ark. R. Crim. P. 33.1. The reason underlying this holding is that when specific grounds are stated and the absent proof is pinpointed, the circuit court can either grant the motion, or, if justice requires, allow the State to re-open its case and supply the missing proof. *Tester v. State*, 342 Ark. 549, 30 S.W. 3d 99 (2003). A further reason that the motion must be specific is that this court may not decide an issue for the first time on appeal. *State v. Fuson*, 355 Ark. 652, 144 S.W.3d 250 (2004). This court may not afford relief that is not first sought in the circuit court. *Weston v. State*, 265 Ark. 58, 576, S.W.2d 705 (1979). The issue concerning

the proof of serious physical injury was not presented to the circuit court for decision in the directed-verdict motion. Accordingly, we must affirm.

Affirmed.

PITTMAN, C.J., and GLOVER, J., agree.